

ASSEMBLY BILL

No. 1998

Introduced by Assembly Member Brownley

February 17, 2010

An act to amend Section 42257 of, and to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, as introduced, Brownley. Recycling: plastic and paper carryout bags.

(1) Existing law requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store. This requirement is repealed on January 1, 2013.

A violation of the enforcement provisions of the existing Fee Collection Procedures Law is a crime.

This bill would instead make those at-store recycling program requirements inoperative on July 1, 2011, and would repeal them on January 1, 2012, and would instead, on and after July 1, 2011, prohibit a store, as defined, from providing a plastic carryout bag to a customer. The bill would require a store, on and after July 1, 2011, with regard to providing carryout bags to a customer at the point of sale, to either make reusable bags available for purchase by the customer or provide a paper carryout bag that is subject to the green bag fee that would be imposed by the bill.

The bill would require a store to charge a green bag fee of not less than \$0.25 for each paper carryout bag distributed at the point of sale. The bill would establish the Paper Bag Pollution Cleanup Fund in the

State Treasury and would require a store to remit these fees, less a specified amount, to the State Board of Equalization for deposit in that fund.

The moneys in the fund would be required to be expended, upon appropriation by the Legislature, in a specified order of priority, by the department for grants to cities and counties for programs related to paper carryout bags and reusable bag giveaway programs, by the department, in consultation with specified state agencies, to develop and implement specified programs related to paper carryout bags, by the State Board of Equalization to reimburse its costs associated with collecting the green bag fees, and by the department for purposes of implementing the bill's provisions. The bill would expressly prohibit the expenditure of revenues from the fund for activities unrelated to the prevention or reduction of paper carryout bag pollution.

The bill would require the department, on or before January 1, 2015, to submit to the Legislature a report regarding the effectiveness of the bill's provisions and recommendations to further encourage the use of reusable bags.

The bill would require the State Board of Equalization to administer the collection of the green bag fees pursuant to the Fee Collection Procedures Law, thereby imposing a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The prohibition imposed by this act, pursuant to Section
4 42281 of the Public Resources Code, is necessary for the
5 environmental, public health, and societal burdens imposed by the
6 use of single-use plastic carryout bags.

7 (b) Despite global treaties to prevent dumping at sea and
8 minimize land-based sources of pollution, and increasing efforts

1 worldwide to protect water quality, the quantity of marine debris
2 in the world's oceans is increasing.

3 (c) Despite recycling and voluntary solutions to control pollution
4 from plastic bags in California, only 5 percent of plastic carryout
5 bags are recycled and the rest either take up valuable landfill space
6 or are discarded in the environment.

7 (d) The North Pacific Gyre in the Pacific Ocean is home to
8 largest garbage dump of plastic trash, now estimated to be the size
9 of the United States and is increasing rapidly.

10 (e) According to the California Coastal Commission, the
11 majority of marine debris is composed of plastic materials; 60 to
12 80 percent overall and 90 percent of floating debris is plastic.

13 (f) It is estimated that at least 267 species of wildlife have been
14 threatened by marine debris through ingestion or entanglement,
15 including sea turtles, fish, marine mammals, and various species
16 of sea birds.

17 (g) Paper bags made from virgin materials are not sustainable
18 alternatives to plastic carryout bags because the production of these
19 types of bags contributes to deforestation, natural resource
20 depletion, greenhouse gas emissions, and additional waterborne
21 wastes.

22 (h) Paper carryout bags that contain no old-growth fiber are
23 100-percent recyclable and contain a minimum of 40 percent
24 postconsumer recycled content have fewer negative impacts than
25 virgin paper bags.

26 (i) Plastics made from bio-based sources that are marketed as
27 "compostable" or "biodegradable" have not been shown to degrade
28 in aquatic environments and require conditions only available in
29 composting facilities to rapidly break down into constituents that
30 assimilate back into the environment.

31 (j) With the exception of the City and County of San Francisco,
32 the City of Oakland, and a few other communities, these
33 composting facilities are not typically available to local
34 jurisdictions and compostable plastic in communities without
35 commercial composting would be disposed of as waste.

36 (k) On September 18, 2006, the West Coast Governor's
37 Agreement on Ocean Health was signed by Governor
38 Schwarzenegger of California, Governor Kulongoski of Oregon,
39 and Governor Gregoire of Washington to address the challenges

1 of the Pacific coast's declining health and to establish its protection
2 as a regional priority.

3 (l) On February 8, 2007, the California Ocean Protection Council
4 approved a resolution to call for statewide action to reduce the
5 amount of land-based sources of marine debris and the resulting
6 implementation strategy was adopted by the Ocean Protection
7 Council in November 2008, which called for aggressive actions
8 to reduce the use of single-use plastic products, including plastic
9 bags.

10 (m) On World Oceans Day 2009, the Under-Secretary General
11 and Executive Director of the United Nations Environmental
12 Programme called for an outright ban or rapid phase-out of thin
13 film plastic carryout bags worldwide.

14 (n) In the United States, and in California, many cities have
15 already enacted bans, or are seriously considering banning plastic
16 single-use bags.

17 (o) The Legislature finds and declares that proliferation of these
18 bans should be of statewide interest and concern and that the state
19 should take action regulating the use of plastic single-use bags.

20 (p) The imposition of the fees pursuant to Section 42282 of the
21 Public Resources Code would not result in the imposition of a tax
22 within the meaning of Article XIII A of the California Constitution
23 because the amount and nature of the fee have a fair and reasonable
24 relationship to the environmental, public health, and societal
25 burdens imposed by the use of paper carryout bags, and there is a
26 sufficient nexus between the fees imposed and the use of those
27 fees to support programs to prevent the litter of paper carryout
28 bags, to clean up the litter caused by paper carryout bags, and to
29 encourage the reduction of the use of paper bags.

30 (q) (1) There is a clear nexus between the type and amount of
31 the fees imposed pursuant to this act and the environmental, public
32 health, and societal costs resulting from paper carryout bags.

33 (2) It is the intent of the Legislature that the fees that are
34 imposed pursuant to Section 42282 of the Public Resources Code
35 be consistent with *Sinclair Paint Co. v. State Bd. of Equalization*
36 (1997) 15 Cal.4th 866.

37 SEC. 2. Section 42257 of the Public Resources Code is
38 amended to read:

39 42257. This chapter shall remain in effect only until January
40 1, 2013 operative only until July 1, 2011, and, and as of that date

1 *January 1, 2012*, is repealed, unless a later enacted statute, that is
2 enacted before ~~January 1, 2013~~ *January 1, 2012*, deletes or extends
3 that date.

4 SEC. 3. Chapter 5.3 (commencing with Section 42280) is added
5 to Part 3 of Division 30 of the Public Resources Code, to read:

6
7 CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

8
9 Article 1. Definitions

10
11 42280. For purposes of this chapter, the following definitions
12 shall apply:

13 (a) “Compostable carryout bag” means a carryout bag provided
14 by a store to a customer at a point of sale that meets either of the
15 following requirements:

16 (1) Is composed of bio-based sources, such as that derived from
17 corn or other plant sources.

18 (2) Meets the American Society for Testing and Materials
19 (ASTM) Standard Specification for Compostable Plastics as
20 specified in subparagraph (A) of paragraph (1) of subdivision (b)
21 of Section 42356.

22 (b) “Department” means the Department of Resources Recycling
23 and Recovery.

24 (c) “Fund” means the Paper Bag Pollution Cleanup Fund
25 established pursuant to subdivision (a) of Section 42283.

26 (d) “Green bag fee” means a fee imposed pursuant to Section
27 42282 upon customers for receipt of a paper carryout bag at point
28 of sale.

29 (e) “Paper carryout bag” means a carryout bag provided by a
30 store to a customer at point of sale that meets all of the following
31 requirements:

32 (1) Contains no old-growth fiber.

33 (2) Is 100-percent recyclable.

34 (3) Contains a minimum of 40 percent postconsumer recycled
35 content.

36 (f) “Plastic carryout bag” means a plastic bag designed for single
37 use, including a compostable carryout bag as defined in subdivision
38 (a), that is provided by a store to a customer at the point of sale
39 that is not a reusable bag.

1 (g) “Reusable bag” means a bag that is specifically designed
2 and manufactured for multiple reuse, meaning 50 or more uses.

3 (h) “State board” means the State Board of Equalization.

4 (i) “Store” means a retail establishment that provides paper or
5 plastic carryout bags to its customers as a result of the sale of a
6 product and that meets any of the following requirements:

7 (1) Meets the definition of a “supermarket” in Section 14526.5.

8 (2) Has over 10,000 square feet of retail space that generates
9 sales or use tax pursuant to the Bradley-Burns Uniform Local Sales
10 and Use Tax Law (Part 1.5 (commencing with Section 7200) of
11 Division 2 of the Revenue and Taxation Code) and has a pharmacy
12 licensed pursuant to Chapter 9 (commencing with Section 4000)
13 of Division 2 of the Business and Professions Code.

14 (3) Is a chain convenience food store or foodmart primarily
15 engaged in retailing a limited line of goods that generally includes
16 milk, bread, soda, and snacks, and has a total cumulative square
17 footage of 10,000 square feet or more.

18 19 Article 2. Carryout Bag Regulation

20
21 42281. (a) On and after July 1, 2011, a store shall not provide
22 a plastic carryout bag to a customer at the point of sale

23 (b) (1) On and after July 1, 2011, with regard to providing
24 carryout bags to a customer at the point of sale, a store shall make
25 reusable bags available for purchase by a customer or provide to
26 the customer a paper carryout bag that is subject to the fee specified
27 in Section 42282.

28 (2) A store shall only provide paper carryout bags that meet the
29 definition specified in subdivision (e) of Section 42280.

30 42282. (a) A store shall not provide a paper carryout bag to a
31 customer at the point of sale, unless the store charges the customer
32 a green bag fee of not less than twenty-five cents (\$0.25) per bag.

33 (b) The amount charged pursuant to subdivision (a) shall not
34 be subject to sales tax, shall be separately stated on the receipt
35 provided to the customer at the time of sale, and shall be identified
36 as the “Green Bag Fee.”

37 (c) A store may retain not more than five cents (\$0.05) of the
38 green bag fee for each paper carryout bag and shall remit the
39 remainder of the green bag fee to the state board pursuant to
40 Section 42284.

1 (d) A store charging a green bag fee pursuant to subdivision (a)
2 may only use the amount of the fee retained pursuant to subdivision
3 (c) for the following purposes:

4 (1) Reimbursement of the store's costs associated with the
5 collection and remittance of the green bag fee.

6 (2) The development of in-store educational materials for
7 distribution to customers encouraging the use of reusable bags.

8 (3) The development and implementation of an educational
9 campaign targeting low-income communities and
10 non-English-speaking communities to encourage greater use of
11 reusable bags.

12 (4) Reimbursement of the store's costs associated with providing
13 reusable bags as donations to community organizations, nonprofit
14 organizations, and other similar entities.

15 (5) Reimbursement of the store's costs associated with the
16 purchase of paper carryout bags.

17
18 Article 3. Paper Bag Pollution Cleanup Fund
19

20 42283. (a) The Paper Bag Pollution Cleanup Fund is hereby
21 established in the State Treasury. All green bag fees collected by
22 the state board pursuant to this chapter shall be deposited in the
23 fund.

24 (b) The moneys in the fund shall be expended, upon
25 appropriation by the Legislature in the annual Budget Act, in the
26 manner and in the order of priority as follows:

27 (1) (A) By the department, 80 percent of the moneys in the
28 fund, for grants to cities and counties, on a per capita basis, for the
29 following purposes:

30 (i) Establishing and maintaining local programs to control
31 pollution from paper carryout bags, including those programs in
32 partnership with nonprofit community-based organizations, for
33 purposes of litter cleanup activities.

34 (ii) Source reduction efforts to help implement zero waste
35 programs, litter prevention programs, and litter prevention
36 education and outreach programs related to paper carryout bags.

37 (iii) Mitigation projects relating to stormwater pollution caused
38 by paper carryout bags, including devices to prevent paper carryout
39 bag litter from entering storm drain systems.

(iv) Reusable bag giveaway programs, including those targeting low-income residents.

(B) The amount for which a city or a county is eligible shall be based on the total population of the incorporated area of the city or the total unincorporated area of the county, whichever is applicable.

(2) By the department, 14 percent of the moneys in the fund, in consultation with the Ocean Protection Council, the State Water Resources Control Board, and the Department of Toxic Substances Control, to develop and implement programs to encourage and support pollution prevention, abatement, cleanup, enforcement, green chemistry and product redesign, water quality protection and cleanup, and public education and outreach related to the use of paper carryout bags.

(3) No more than 3 percent of the funds shall be expended by the state board, to reimburse the state board's costs of administering Section 42285.

(4) No more than 3 percent shall be expended by the department for purposes of administering the requirements of this chapter.

(c) The revenue from the Paper Bag Pollution Cleanup Fund for the purposes of this section shall not be expended on activities unrelated to the prevention or reduction of paper carryout bag pollution pursuant to *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866.

Article 4. Report

42284. On or before January 1, 2015, the department shall submit a report to the Legislature regarding the effectiveness of this chapter. The report shall also include recommendations to further encourage the use of reusable bags by consumers and retailers and to reduce the consumption of single-use carryout bags, including at a minimum, both of the following:

(a) Expanding the definition of stores that are subject to this chapter to all other stores and retail establishments distributing single-use bags.

(b) Increasing the green bag fee imposed pursuant to Section 42282, including necessary adjustments for inflation, to increase the effectiveness of this chapter.

Article 5. Administration and Enforcement

42285. (a) The state board shall administer and collect the green bag fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(b) The state board may adopt rules and regulations to carry out this article, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(c) The green bag fee shall be due and payable quarterly on or before the 25th day of the month following each calendar quarter. Payments shall be accompanied by a form, as prescribed by the state board, including, but not limited to, electronic media.

(d) The state board may require the payment of the green bag fee for other than quarterly periods.

42286. Except as otherwise provided by this chapter, the department shall administer and enforce this chapter.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.